

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: PAYNE et al.

Serial No.: 10/631,272

Filed: July 31, 2003

Title: METHOD AND SYSTEM FOR
TEMPORARY ATTACHMENT OF A
CONTAINER TO A VEHICLE



Art Unit: 3632

Examiner: Jonathon A. Szumny

DECLARATION OF RICHARD UMBRELL UNDER 37 C.F.R. § 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Washington, D.C. 20231

1. I, the undersigned, am one of the named inventors in the above identified application. I am also the owner of Buff and Shine Mfg. Buff and Shine Mfg. is a small company located in Rancho Dominguez, California that has supplied high quality buffing pads and automobile detailing accessories to the automobile reconditioning industry since 1989. One of the products made and distributed by Buff and Shine Mfg. is the Bottle BootTM bottle holder, which is a bottle holder covered by this patent application.
2. This declaration is submitted to rebut the Examiner's rejection of Claims 1 and 9 under 35 U.S.C. § 103(a) in view of Sorth and Wemyss in the Office Action mailed November 1, 2004, by showing that it would not have been obvious to modify Sorth by addition of a rubber cushion/boot to prevent the object to which a cup holder is attached from being marred. This declaration is further submitted to rebut the Examiner's rejection of Claim 4 under 35 U.S.C. § 103(a) over Sorth in view of Wemyss and Jasmagy, Jr., by showing that it would not have been obvious to modify the sleeve of cup holder to be tapered to allow for a secure fit around various sized containers.

3. The need for a device to temporarily and securely store the various polish and or wax bottles used during detailing an automobile has long been felt in the reconditioning industry. A technician needs to have the bottle handy as he moves around the car. However, prior to this invention, the bottles were either placed upon the car, where they would frequently roll off or on the floor where they could be stepped on, kicked away or run over by a car. Solutions such as a waist pouch have been attempted. However, problems exist with this solution in that movement of the technician while working on the car can result in pressure being applied to the squeeze bottle and excess solution being discharged onto the very surface the technician just cleaned or polished. The problem of temporary storage of polish/wax bottles has long been known in the industry, but heretofore, nobody thought to solve the problem by providing a temporarily mountable storage device that would securely hold the bottle and not permanently mar the surface of the automobile.
4. I do not believe that my solution to this problem is an obvious combination of the teachings in the Sorth and Wemyss patents. These patents teach an attachment device with a magnet encased in a rubber shell, however, rubber shell is textured which could still mar any surfaces with which it comes in contact, and the shell is between two coupling magnets, not the surface to which the base is attaching. The actual magnetic base is fixedly attached to automobile surface. This is not at all similar to my invention which specifically requires a rubber cushion between the attachment surface and the magnet to prevent the magnet from scratching the attachment surface.
5. As a professional marketer and seller of automobile detailing accessories, I am generally aware of the products that are available for sale in the automobile reconditioning industry in the United States. I am not aware of any temporary magnetic storage and attachment device that incorporates a cushion surrounding the magnet to prevent damage to the attaching surface, except for the Bottle

Boot™ bottle holder. Based upon information received from my customers in the automobile reconditioning industry and my own familiarity with the industry, I am of the opinion, that prior to the introduction of the Bottle Boot™ bottle holder, no product existed that solved the problem of where to stow the wax and polish bottles while working on an automobile

6. Based upon my own familiarity with the industry, I am of the opinion that this is the first device to provide removable, portable and secure stowage of the bottles of product used by an auto detailer in conditioning a car with no risk of marring that surface. In letters and conversations, my customers have also informed me that they have never seen a product like this before.
7. Exhibit A is a true and correct copy of a letter received from Kevin Romano of Tiger Distributing on January 12, 2005. Mr. Romano is the General manager of Tiger Distributing, a car care distribution business in Baton Rouge, Louisiana and has been in this business since 1993. Tiger Distributing has been a Buff and Shine customer since 1993. In his letter, Mr. Romano describes the issues resolved by the Bottle Boot™ bottle holder as a result of its rubber encased magnetic bottom and specifically states "the Bottle Boot™ is unique to my industry and I have seen nothing like it in the years of being in this business."
8. Exhibit B is a true and correct copy of a letter received from Paul Carver on January 12, 2005. Mr. Carver is the president and owner of Tri Star Auto Cosmetics and has been successful in this business since 1990. Tri Star Auto Cosmetics has been a Buff and Shine customer since 1990. In his letter, Mr. Carver states that "there has been nothing like the Bottle Boot before" and that it "is an unmatched and unique product specifically for the reconditioning and body shop industries."
9. Exhibit C is a true and correct copy of a letter received from Steve Knipp on January 12, 2005. Mr. Knipp is the president and owner of Knipp Distributing,

Inc., a retail and commercial distributor of car care products in Wichita, KS and has been successful in this business since 1974. Knipp Distributing has been a Buff and Shine customer since 1996. In his letter, Mr. Knipp states that he has seen nothing "remotely like [the Bottle BootTM] in the many years [he has] been a car care product distributor."

10. Exhibit D is a true and correct copy of a letter received from Jim Kinzy about the Bottle BootTM bottle holder. Jim Kinzy is the owner and president of Southwest Autocare, a manufacturer and supplier of car cleaning and protection products located in Phoenix, Arizona and established in 1984. Southwest Auto Care has been a Buff and Shine customer since 1991. In his letter, Mr. Kinzy states that "the device is great for containing small plastic bottles used to contain materials such as polish, compounds, waxes and glazes." He further notes that "with it's magnetic bottom you can move the above products with you as you work your way around a car" and that it is "a perfect device to help consolidate the tools necessary for reconditioning automobiles." Mr. Kinzy also states that "in all my years in this business there has been nothing like it introduced."
11. Exhibit E is a true and correct copy of a letter received from Rick Carley, Sr., owner of Auto Brite Distributing Company, Inc, on January 27, 2005. Auto Brite Distributing Company, Inc. is an auto reconditioning supplies distributor in Albuquerque, New Mexico and has been a customer of Buff and Shine since 1998. In his letter, Mr. Carley states that he has never seen a product like this before and that the main reason he and his body shop customers like the Bottle BootTM bottle holder is that "it doesn't scratch the paint because of the unique rubber bottom."
12. Exhibit F is a true and correct copy of a letter received from Mr. Gordon Peterson, of Auto Wax Supply, on February 24, 2005. Auto Wax Supply is a car care product distribution company in Witchita Falls, Texas and has been a Buff and Shine customer since 1990. In his letter, Mr. Peterson states he first

learned of the Bottle BootTM bottle holder when he was given a sample by Buff and Shine and that he "immediately recognized the usefulness of this product for my customers." He further notes that this is "the first product that I have seen on the market that enables you to conveniently stick your product bottles on the car without having to worry about scratching the car surface" and that the "cushion between the magnet and where it attaches to the car" is an "important feature" that he "especially likes."

13. Exhibit G is a true and correct copy of a letter received from Mr. Doug Henderson, of Southern Detail Suppliers, on February 25, 2005. Southern Detail Suppliers is a car care product distribution company in Smyrna, Georgia and has been a Buff and Shine customer since 1995. In his letter, Mr. Henderson states he "has been selling the product [the Bottle BootTM] for about one year" and has "received much positive feedback from [his] auto detailer customers." He notes that his customers "appreciate the handiness of the boot for storing the wax and polish bottles at hand" and "that it does not mar the surface of the car when it is removed." He further notes that this is an "ingenious solution" and that he "never would have thought to stick bottles to the exterior of the car because the whole point of detaining the car is to remove marks from the paint on the car" but that "the rubber cushion between the magnet and the car surface is the perfect way around this problem and for ease of use, the exterior of the car really is the perfect place to store the bottles while working on the car."
14. During the first year this product was introduced, from January 2004 – December 2004, 9,605 units, with total invoices of \$ 47,544.75, were sold to major distributors of automobile reconditioning products located across the United States, for example in Kansas, Louisiana, Arizona, New Mexico and California. This number represents a large volume of sales for a new product produced by a small company and not heavily advertised. I am very pleased with the significant commercial success that this product has achieved

15. I believe that this volume of sales to major distributors of automobile cleaning products representing companies with over 79 years combined experience in the automobile reconditioning industry and located across the United States within the first year that the product was on the market represents broad and immediate acceptance by the trade.
16. No money was spent on advertising this product. The only advertising for this product was posting a flyer on our website detailing the features of the product, namely the secure, tapered sleeve, the magnetic bottom and the soft rubber encasement to prevent scratching the paint. In addition, we sent a copy of the flyer along with one sample product to each of our current customers.
17. Exhibit H is a true and correct copy of the flyer that is posted on our website www.buffandshine.com and was sent to our customers along with one sample of the Bottle Boot™ bottle holder.
18. Based upon feedback received from my customers, it is my opinion that the commercial success of my product is a direct result of the characteristics of the claimed invention, specifically the ability to temporarily attach the storage device containing a polish bottle to the exterior surface of an automobile and later remove it without marring the surface of the automobile. In letters received from my customers, specific features of the Bottle Boot™ were mentioned and applauded. Mr Romano and Mr. Kinzy and Mr. Peterson mentioned that the

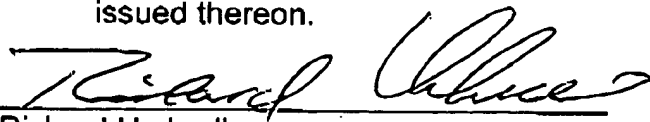
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February 28, 2005

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magnetic bottom that allows a technician to move the products as he works his way around the car makes this product the perfect device to consolidate tools necessary for reconditioning automobiles. Mr. Henderson mentioned that his customers appreciate the handiness of the boot for storing their products at hand while they work. Mr. Carley mentioned that the main reason their body shop customers like the product is that it doesn't scratch the paint because of the unique rubber bottom. Mr. Peterson mentioned that the cushion is an important feature because it won't scratch the paint when it is attached to or removed from the car. Mr. Romano mentioned that the sleeve ensures the product will remain secure. It is my opinion that they would not be able to use such a magnetic device without the claimed characteristic of the cushion to prevent scratching of the automobile surface.

19. In light of the long felt need for a product to conveniently store wax and polish bottles at hand while working on an automobile, the immediate acceptance of my Bottle Boot™ bottle holder by car care product distributors across the country and their customers, and the commercial success of my product with in the first year on the market, I believe that the my patent application regarding a method and system for temporary attachment of a container to a vehicle is not obvious in view of the prior art cited in the Office Action dated November 1, 2004.
20. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.


Richard Umbrell

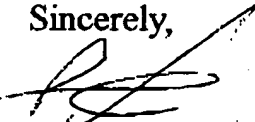
2-28-05
Date

To Whom It May Concern,

1/12/05

I own a car care distribution business in Baton Rouge La. I sell car care products related to the reconditioning industry. Typically, this would include waxes, polishes, compounds and glazes. These products are normally packaged in gallon containers and sold that way to end users/detail technicians. The enduser would then break the product down into manageable 12oz or 16oz plastic bottles. The plastic bottles are equipped with a nozzle tip and prior to buffing the contents are squeezed onto the car surface in a line. The technician will then take a high speed buffer with an attached buffing pad and work the product into the car surface. This is all done to achieve a better shine and blemish free paint surface. As the technician progresses around the car, what do you do with the plastic polish bottle? Ideally, the bottle is supposed to accompany the technician because it contains the polishing compound. Prior to the Bottle Boot, the plastic bottle, when placed on the car would frequently roll off, or, on the floor where it gets kicked, stepped on or run over by a car. To complicate matters, the bottle would be left behind at the original start point so the technician wasted time retrieving the bottle as the job moved on. With the introduction of the Bottle Boot these issues were resolved. The Bottle Boot secures the plastic bottle safely in a sleeve and now the bottle is portable as a result of the Bottle Boot having a rubber encased magnetic bottom. The technician can now place the bottle anywhere on the car, preferably forward of his position which is ideal when polishing a car with a high speed-buffing machine. The Bottle Boot is unique to my industry and I have seen nothing like it in the years of being in this business.

Sincerely,



Kevin Romano
Tiger Distributing



To Whom It May Concern,

1/12/05

The Bottle Boot is a clever invention. There has been nothing like it before and with its introduction, I would like to say it has been a welcome addition to my sales inventory. The Bottle Boot is an unmatched and unique product specifically for the reconditioning and body shop industries.

Sincerely,

A handwritten signature in cursive script that reads "Paul Carver".

Paul Carver

Tri Star Auto Cosmetics

JAN-17-2005 12:24 From:
Jan 12 03:03:08p

Steven Knipp

To: 12134306407
316-265-5131

P.4/5
P.1

Jan-12-06 10:32A

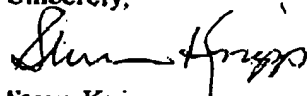
P.02

Dear Sir,

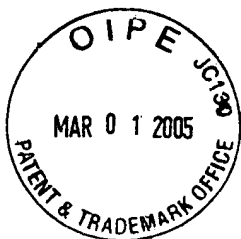
The Bottle Boot is a worthwhile and marketable invention. There is nothing like it in the industry and I have not seen anything remotely like it in the many years I have been a car care product distributor in Kansas.

If you have any more questions regarding this product, please feel free to contact me

Sincerely,



Steve Knipp
Knipp Distributing, Inc.





Manufacturer and Distributor of Detail Chemicals and Supplies

To whom it may concern,

I would like to applaud Buff and Shine Mfg. for introducing the Bottle Boot into the automobile reconditioning market. The device is great for containing small plastic bottles used to contain materials such as polish, compounds, waxes and glazes. With it's magnetic bottom, you can move the above products with you as you work your way around a car. In all my years in this business there has been nothing like it introduced. In short, a perfect device for to help consolidate the tools necessary for reconditioning automobiles

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Kinzy", with a horizontal line extending to the right.

Jim Kinzy
Southwest Auto Care
Phoenix, Arizona

17054 SO. 54th Street Chandler, AZ 85226
Toll Free 1-888-84MAGIC Office (480) 705-0273 Fax (480) 705-8820

Jan-27-05 09:48A

P.01

AUTO BRITE INC.

**107 Sin Nombre Ct. NE
Albuquerque, NM 87113
Office (505) 342-2778 Fax (505) 342-2779**

January 27, 2005

Dear Sirs:

I've been selling Buff and Shine's bottle boot for some time now. What I like most about the product is the cushioned rubber bottom. If you don't know, the bottle boot is a sleeve that holds plastic bottles that contain compounds like polish and wax. This is for restoring paint. My body shop customers like the bottle boot for a number of different reasons; the main one is the fact it doesn't scratch the paint because of the unique rubber bottom.

I have been in the car care distribution business for many years and I have never seen a product like this before.

Sincerely,



**Rick Carley Sr.
Albuquerque, NM**

Feb-23-05 12:30P

P.02

To whom it may concern,

I sell car care products related to automobile detailing. I have been selling car detailing products for many years. One of the products I currently sell is the bottle boot from Buff and Shine Mfg. I first learned about this product when Buff and Shine, one of my regular suppliers gave me a sample.

I immediately recognized the usefulness of this product for my customers. Before, auto detailers had no means of conveniently storing their polish and wax bottles while they were detailing a car. They had to carry the bottle around with them and try to find somewhere to set it where it would not fall over, roll away or otherwise get lost. Now with the bottle boot, they can put their bottles in the tapered sleeve and stick the magnetic end of the boot onto the car near the portion of the car where they are working. As they move around the car, they can take the bottle boot with them and always have the polish or wax in hand.

What I especially liked about the bottle boot is that there is a cushion between the magnet and where it attaches to the car. This is an important feature, because it won't scratch the paint when it is attached to or removed from the car. This is the first product that I have seen on the market that enables you to conveniently stick your product bottles on the car without having to worry about scratching the cars surface.

Sincerely,



Gordon Peterson
Auto Wax Supply
Wichita Falls, TX

To whom it may concern,

I am writing in praise of Buff and Shine's product the "bottle boot." I have been selling this product for about one year and I have received much positive feedback from my auto detailer customers. They really appreciate the handiness of the boot for storing their wax and polish bottles at hand while they work on a car. And they like the fact that it does not mar the surface of the car when it is removed.

This is really an ingenious solution to the problem of where to store the bottles while working on the car. I would never have thought to stick the bottles to the car exterior because the whole point of detailing the car is to remove surface marks from the paint on the car and the idea of sticking anything to that surface seems counterintuitive. But the rubber cushion between the magnet and the car surface is the perfect way around this problem and for ease of use, the exterior of the car really is the perfect place to store the bottles while working on the car.

Regards,



Doug Henderson
Southern Detail Suppliers
Smyrna, Georgia